

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FIRST MIDWEST BANK,)	
)	
Plaintiff,)	
)	Case No. 08 C 612
v.)	
)	Honorable Virginia M. Kendall
WAYNE W. LESTARCZYK, an individual;)	
MARY A. LESTARCZYK, an individual,)	Hearing: July 3, 2008 at 9:00 a.m.
)	
Defendants.)	

MOTION FOR RULE TO SHOW CAUSE

Defendant Mary Lestarczyk (“*Ms. Lestarczyk*”) hereby submits her *Motion for Rule to Show Cause* (the “*Motion*”) requesting that this Court compel Wayne Lestarczyk to appear in Court and identify the location of the boat at issue herein (the “*Boat*”).

Background

First Midwest Bank (the “*Plaintiff*”) filed its *Complaint to Foreclose First Preferred Mortgage of Vessel* (the “*Complaint*”) on January 28, 2008. On March 17, 2008, Plaintiff filed its executed Summons, which indicates that the Plaintiff served Wayne Lestarczyk with a summons and copy of the Complaint. Wayne Lestarczyk is in possession of the Boat, and Ms. Lestarczyk wishes to assist the Plaintiff in locating and selling the Boat for the greatest amount of money possible.

To that end, Ms. Lestarczyk and the Plaintiff appeared in Court on Monday, June 23, 2008, and reported that they were in negotiations regarding an agreed order regarding the recovery (from Wayne Lestarczyk) and sale of the Boat. In essence, and still subject to approval from the Plaintiff, Ms. Lestarczyk would have the Boat recovered from Wayne Lestarczyk and sold by Basa’s Marine. If Basa’s Marine was unable to sell the Boat, the Plaintiff would proceed

with an auction of the Boat for the highest and best offer. The agreed order would allow the parties to get the Boat for sale as soon as possible, to take advantage of the summer boating season, but also allow the Plaintiff to sell the Boat at auction should a buyer not be procured by Basa's Marine. This agreed order, however, depends upon both the plaintiff and Ms. Lestarczyk having information regarding the location of the Boat.

Up through Monday, June 23, 2008, the Boat had been located at Frankfort Drywall Supply. *See* Declaration of Mary Lestarczyk, at ¶ 4 (attached hereto as Exhibit A). On Wednesday, June 25, 2008, the Boat was not located at Frankfort Drywall Supply, and the Boat was also not at Wayne Lestarczyk's residence. *See* Declaration of Mary Lestarczyk, at ¶ 5. It appears that sometime on Tuesday, June 24, 2008, Wayne Lestarczyk had the Boat relocated to a new and undisclosed location. In the past, Wayne Lestarczyk has suggested that he will hide, damage or destroy the Boat in an effort to cause financial and emotional harm to Ms. Lestarczyk. *See* Declaration of Mary Lestarczyk, at ¶ 6. Ms. Lestarczyk files this Motion to identify the location of the Boat – so that the agreed order can be finalized – and to ensure that no damage has been, or will be, done to the Boat.

Relief Requested

By this Motion, Ms. Lestarczyk requests an order by this Court compelling Wayne Lestarczyk's attendance in Court to identify the location of the Boat, so that the agreed order between the Plaintiff and Ms. Lestarczyk can be finalized, and also order Wayne Lestarczyk not to damage or destroy the Boat during the pendency of this Case. Because time is of the essence,¹ Ms. Lestarczyk also requests that if Wayne Lestarczyk does not appear for Court to explain the

¹ The timing of the sale of the Boat is crucial for all parties involved. By all accounts, the Boat is worth significantly more money if it can be sold during the summer months, and any delay would severely impact the value of the Boat and the amount of the potential deficiency judgment.

whereabouts of the Boat, that a body attachment be issued for Wayne Lestarczyk and the U.S. Marshal's Service be dispatched to enforce the body attachment. The agreed order contemplated between the Plaintiff and Ms. Lestarczyk – which would resolve one of the major hurdles in this case – is dependant upon the location of the Boat being known. To the extent Wayne Lestarczyk wishes to cooperate and assist this Court resolve the issues presented in the Complaint, he has the opportunity to attend Court and identify the location of the Boat. To the extent Wayne Lestarczyk would rather hide or damage the Boat, and ignore this Court's order, a body attachment should issue against him.

WHEREFORE, Ms. Lestarczyk respectfully requests that the Court enter an order:

- (a) compelling Wayne Lestarczyk to attend Court on July __, 2008, at __:__ .m., Room 2319 of the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604 to identify the location of the Boat;
- (b) issuing a body attachment in the event Wayne Lestarczyk does not appear in Court on the date and at the time indicated above;
- (c) enjoining Wayne Lestarczyk from hiding, damaging or destroying the Boat during the pendency of this case; and
- (d) granting such other and further relief this Court deems just and proper.

Dated: June 26, 2008

Respectfully submitted,

By: /s/ John S. Delnero

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